

N.D.A.G. Letter to Henegar (April 30, 1986)

April 30, 1986

Mr. Dale L. Henegar
Commissioner
North Dakota Game & Fish Department
100 North Bismarck Expressway
Bismarck, ND 58501-5095

Dear Mr. Henegar:

Thank you for your letter dated March 24, 1986.

You have inquired as to whether or not an additional white-tailed deer season may be declared to permit gun hunters to take more than one white-tailed deer in the year 1986. You have stated that more big game licenses will be available than there are hunters and there is an especially abundant white-tailed deer population. You have asked whether or not N.D.C.C. §20.1-05-03 would prohibit an additional season to permit hunters who have licenses for the regular and additional season to take two white-tailed deer while hunting with a gun in the year 1986.

N.D.C.C. §20.1-05-03 states, in part, as follows:

SEASON FOR TAKING AND TRANSPORTING BIG GAME -- BAG LIMIT. Any person having a big game hunting license as prescribed in this title may take, kill, and transport, during the open or lawful season, one big game animal in this state. . . .

This statute specifically prohibits a person, possessing a big game hunting license, to kill more than one big game animal in this state. This statute does not provide the authority for the taking of more than one big game animal by a person possessing a big game hunting license.

However, N.D.C.C. §20.1-08-04(3) will authorize a special procedure for the taking of more than one big game animal by a hunter. That section states as follows:

20.1-08-04. CONTENTS OF GOVERNOR'S ORDER OR PROCLAMATION RELATING TO THE TAKING OF BIG GAME, SMALL GAME, FISH, AND FUR-BEARERS --SPECIAL PERMITS.

* * *

3. In addition to the regular big game hunting licenses, the governor, by order or proclamation, may authorize the issuance of special permits to hunt big game in certain restricted areas. When acting pursuant to this subsection, the governor shall designate in his proclamation:

- a. The species of big game which can be hunted.
- b. The boundaries of the restricted area.
- c. The number of special permits to be issued.
- d. The procedure to determine which applicants should receive the special permits.
- e. The manner and times in which the big game may be taken.

Special permits issued under this subsection shall be issued in strict compliance with the governor's proclamation.

This provision specifically authorizes the Governor, by order or proclamation, to issue a special permit in addition to the regular big game hunting license. This special permit would be limited to hunting in certain restricted areas. Based upon this statutory provision, the Governor could declare, by order or proclamation, certain restricted areas in the state open for hunting by this special permit. A person possessing a regular big game hunting license for the normal white-tailed deer season could obtain a special permit pursuant to the Governor's proclamation which would authorize that person to take, kill, and transport an additional white-tailed deer in accordance with the Governor's order or proclamation. One of the deer could be taken pursuant to the regular big game license and the other deer pursuant to the special permit.

By this statutory language, however, a statewide special permit procedure would not be authorized. The special permit would be permitted only in restricted areas; presumably those areas with an overabundant white-tailed deer population which, by necessity, requires an additional harvest of such game animals.

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Absent such order or proclamation establishing this special permit procedure, no statutory authority exists for increasing the number of white-tailed deer which may be taken, killed, and transported beyond the limitations of N.D.C.C. §20.1-05-03.

Although N.D.C.C. Title 20.1 does not specifically prohibit the Governor, by order or proclamation, from declaring more than one open regular hunting season or the issuance of more than one regular hunting license to a big game hunter, I find that the legislative intent expressed in N.D.C.C. Title 20.1 does not permit such action by the Governor. N.D.C.C. §20.1-05-03 establishes a limit to the taking, killing, and transportation, during the open or lawful season, to one big game animal in this state. N.D.C.C. §20.1-08-02(2) authorizes the Governor, when he determines that any species of big game have become sufficient in number to warrant an open season or to be detrimental or a nuisance to the farmers of this state, to "declare an open season thereon, or may extend the open season provided by law." The Governor is not given the authority in this section to declare more than one open season but is limited to the extension of a declared open season.

As noted above, N.D.C.C. §20.1-08-04(3) authorizes the Governor, by order or proclamation, to issue special permits to hunt big game animals in certain restricted areas in addition to the regular big game hunting license. Although N.D.C.C. §20.1-08-04(1) and (2) may be read to grant the Governor discretion in the number of licenses to be issued, the number of big game animals to be taken, the places where such animals may be taken and at what times they may be taken and possessed, such an interpretation of those statutory provisions would be in conflict with the clear legislative intent that the special permit procedure be utilized should big game animals be taken and killed in this state in addition to those authorized to be taken or killed pursuant to the regular big game hunting license. If the Legislature intended that the Governor have complete discretion to declare more than one open season or issue more than one regular big game hunting license to a hunter, it could have expressly so provided. In addition, no need would exist for the special permit procedure if the Governor possessed the discretion, by order or proclamation, to issue two or more regular big game hunting licenses to a hunter or to declare more than one regular open season.

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As noted above, N.D.C.C. §20.1-08-02(2) authorizes the Governor, by order or proclamation, to extend the open season on big game animals. In addition to the special permit procedure, an extension of the regular season is an action which may be taken by the Governor in addition to, or in conjunction with, the special permit procedure.

I trust that this response has answered your inquiry.

Sincerely,

Nicholas J. Spaeth

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